

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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COMMUNICATIONS
DIVISION

In the Matter of)
)
UACC Midwest, Inc. d/b/a)
United Artists Cable Mississippi)
Gulf Coast; et al.)
)
v.)
)
South Central Bell Telephone)
Company)

CC Docket No. 95-94

PA 91-0005 through
PA 91-0009

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MOTION TO DISMISS

BellSouth Telecommunications, Inc., d/b/a South Central Telephone Company, by counsel, pursuant to 47 C.F.R. § 1.221(C) respectfully moves to dismiss the complainants filed herein with prejudice for failure to prosecute, and for its motion states as follows:

1) The Hearing Designation Order in this case was adopted, released, and mailed on June 15, 1995.

2) Paragraph 26 of the Hearing Designation Order, and 47 C.F.R. § 1.221(c) of the Commission's rules, both require that Notice of Appearances were to be filed within twenty (20) days of the mailing of the Hearing Designation Order.

3) Pursuant to the Order, Commission's rules, the last day to timely file a Notice of Appearance was on or before July 5, 1995. Hearing Designation Order para. 26; 47 C.F.R. § 1.4(b)(2), 1.4(d).

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4) The Commission's rules further state that "[a] fee must accompany each written appearance filed with the Commission in certain cases designated for hearing. See subpart G, part 1 for the amount due. 47 C.F.R. § 1.221(f). Subpart G, part 1, 47 C.F.R. § 1.1105, sets forth a fee of \$7,765 for "All Common Carrier Services: a. Hearing (Comparative New or Major/Minor Modifications)" and \$140 for "c. Formal Complaints and Pole Attachment Complaints Filing Fee."

5) The Commission's rules expressly provide that "[w]here an applicant fails to file such a written appearance within the time specified, or has not filed prior to the expiration of that time a petition to dismiss without prejudice, or a petition to accept, for good cause shown, such written appearance beyond expiration of said 20 days, the application will be dismissed with prejudice for failure to prosecute."

6) The Notice of Appearance filed on behalf of complainants UACC Midwest, Inc., d/b/a United Artists Cable Mississippi Gulf Coast, Telecable Associates, Incorporated, Mississippi Cablevision, Inc., and Mississippi Cable Television Association, was filed on July 6, 1995, beyond the expiration of the 20 day filing period, and therefore must be dismissed. 47 C.F.R. § 1.221(c), 47 C.F.R. §1.4(d). A copy of the Notice of Appearance, showing an FCC

date filed stamped as July 6, 1995, is attached as Exhibit A.

7) Further, the Notice of Appearance filed on behalf of complainants UACC Midwest, Inc., d/b/a United Artists Cable Mississippi Gulf Coast, Telecable Associates, Incorporated, Mississippi Cablevision, Inc., and Mississippi Cable Television Association, was filed without a filing fee of any kind.

8) The Commission's rules expressly provide that "[a] written appearance that does not contain the proper fee, or is not accompanied by a deferral request as per § 1.1115 of the rules, shall be dismissed and returned to the applicant by the fee processing staff. The presiding judge will be notified of this action and may dismiss the applicant with prejudice for failure to prosecute if the written appearance is not resubmitted with the correct fee within the original 20 day period.

9) The record in this cause shows that complainants UACC Midwest, Inc., d/b/a United Artists Cable Mississippi Gulf Coast, Telecable Associates, Incorporated, Mississippi Cablevision, Inc., and Mississippi Cable Television Association did not file within the 20 day period following the mailing of the Hearing Designation Order:

- 1) A written notice of appearance in triplicate;
- 2) A petition to dismiss without prejudice;

- 3) A petition to accept, for good cause shown, such written appearance beyond the expiration of said 20 days;
- 4) A fee; or
- 5) A fee deferral request.

10) Accordingly, the failure of complainants UACC Midwest, Inc., d/b/a United Artists Cable Mississippi Gulf Coast, Telecable Associates, Incorporated, Mississippi Cablevision, Inc., and Mississippi Cable Television Association to timely file a written notice of appearance, a petition to dismiss without prejudice, or a petition to accept for good cause shown a written appearance beyond expiration of 20 days requires the mandatory dismissal of their complaints, with prejudice, pursuant to the Commission's rules. 47 U.S.C. § 1.221(c).

11) Alternatively, the complaints of UACC Midwest, Inc., d/b/a United Artists Cable Mississippi Gulf Coast, Telecable Associates, Incorporated, Mississippi Cablevision, Inc., and Mississippi Cable Television Association should be dismissed for complainant's failure to timely file the appropriate accompanying fee or fee deferral request within the 20 day period. 47 C.F.R. § 1.221(f).

12) Complainant Vicksburg Video, Inc., filed a timely written Notice of Appearance on July 5, 1995, accompanied by a fee of \$140. Exhibit B.


13) Respondent was advised by the Commission's staff that the appropriate filing fee to accompany a written

Notice of Appearance in a pole attachment hearing is \$7,765.
Exhibit C.

14) Insofar as complainant Vicksburg Video, Inc., did not contain the proper fee of \$7,765, was not accompanied by a deferral request as per § 1.1115 of the Commission's rules and was not resubmitted with the correct fee within the original 20 day filing period, its complaint should be dismissed pursuant to 47 C.F.R. § 1221(f).

RESPECTFULLY SUBMITTED,

BELLSOUTH TELECOMMUNICATIONS,
INC., d/b/a/ SOUTH CENTRAL
BELL TELEPHONE COMPANY



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Date: July 17, 1995

CERTIFICATE OF SERVICE

I hereby certify that I have this 17th day of July, 1995 served all parties to this action with a copy of the foregoing **MOTION TO DISMISS** by placing a true and correct copy of the same in the United States Mail, postage prepaid, addressed to the parties listed below.


Gwendolyn M. Burleson

**Honorable Joseph Chachkin
Administrative Law Judge
Federal Communications Commission
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